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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 94 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

HARILAL BHIMARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JM PANCHAL for Petitioner

MR SR DIVETIA, APP for Respondent No. 1

MR SN SHELAT for Respondent No. 2

CORAM : MR. JUSTICE S. D. PANDIT

Date of decision: 19/03/97

Harilal Bhimaram Patel, original accused in Summary Criminal Case No. 110 of 1984 on the file of the learned Metropolitan Magistrate, Court No. 6, Ahmedabad has preferred the present revision against the order of conviction passed by the said learned Magistrate on 3rd July, 1984 and it has been confirmed by the learned City Sessions Judge in Criminal Appeal No. 148 of 1984 on 3rd January, 1985.

2. The respondent No. 2 - Shri Chandrakant M Modi, as Food Inspector under the Municipal Corporation for the city of Ahmedabad on 14th December, 1983 at about 7.45 P.M. visited the milk shop where the appellant was working and he purchased 700 ml. of milk and took the said sample and added formalin as a preservative in the same and then divided the same into three parts and had performed all the necessary requirements and he sent one bottle to the Public Analyst for analysis. The Public Analyst found that the fat contents and solid non-fat contents were deficient of 0.9% and 0.9%. He, therefore, lodged a complaint against the present appellant before the learned Metropolitan Magistrate. He had produced evidence before the change and on considering the said evidence, the learned Metropolitan Magistrate has framed a charge against the appellant. The appellant had pleaded not guilty to the same and then the trial took place. The appellant had also exercised the powers under Section 13 (2) of the Food Adulteration Act and a sample of the said milk was also sent to the Central Food Laboratory. The Central Food Laboratory also found that the milk fat was less than 1% and milk solid was less than 7%. The learned Metropolitan Magistrate accepted the evidence led before him and came to the conclusion that the evidence before him was proved the offence alleged against the accused - appellant beyond doubt. He, therefore, held the accused guilty of the offence punishable under Section 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs. 1,000/- in default, to suffer further simple imprisonment for three months.

3. Feeling aggrieved by the said decision, the appellant had preferred Criminal Appeal No. 148 of 1984 before the City Sessions Judge and the same was heard by the Additional City Sessions Judge and by judgment dated 3rd January, 1985 he dismissed the said appeal and confirmed the order of conviction and sentence passed by the learned Metropolitan Magistrate and hence, the

present petition has come before this Court.

4. It is contended before me by Mr J.M. Panchal, the learned advocate for the revision applicant that the sanctioning authority had not applied his mind while giving a sanction for prosecution under Section 20 of the Food Adulteration Act and consequently the prosecution in question is bad in law and, therefore, the order of conviction and sentence deserves to be set aside. He brought to my notice that the report of the Public Analyst does show that there is a seal of the Food and Drugs Laboratory, Vadodara on the said Public Analyst report and the date of signature is also shown by a rubber stamp giving the date as "22 OCT 1983". He contended that the said report also shows that the examination of milk sample had taken place on 16th December, 1983 and consequently the date given as the date of signing of the said report is incorrect and in view of the said incorrect date, the sanctioning authority ought not to have given sanction for the prosecution in question. This submission was also made by Mr Panchal before my predecessor who had heard this appeal on 3rd April, 1985 and he ordered the learned Metropolitan Magistrate to record the evidence of the Deputy Municipal Commissioner who had accorded sanction and to submit the said evidence before this Court. Accordingly, the evidence of the Deputy Municipal Commissioner has been recorded and he has stated that he had perused all the documents and as per the practice which was followed on finding that there was a case for granting sanction, he was only writing the prosecution and then he was applying his seal and signature. He has further deposed that he had accordingly granted the sanction in the case in question. During cross-examination, he was asked about this discrepancy on the certificate of the Public Analyst and he had stated that he had seen the same discrepancy but he had treated the same as a clear mistake. Mr Panchal, the learned advocate for the revision applicant, vehemently argued before me that the claim of the Deputy Municipal Corporation could not be accepted unless the person who had applied the said rubber stamp from the Food and Drug Laboratory comes before the Court and gives such explanation. But the said explanation will have to be considered in view of the material on record apart from the explanation given by the Deputy Municipal Commissioner. It is possible to come to a conclusion that there was an obvious mistake in putting the date of 22 OCT 1983 by making use of a rubber stamp. The Food Inspector had visited the shop where the present revision applicant was working on 14th December, 1983. The sample

had reached the Food and Drug Laboratory on 14th December, 1983 and a certificate also shows that the sample was analysed/examined on 16th December, 1983. Now, when the sample itself was taken on 14th December, 1983, the month of October mentioned in the said rubber stamp is obviously a clear case of mistake and error. For holding that this is clear case of mistake or error, it is not necessary to have any explanation from any authority or person from the Food and Drug Laboratory as admittedly the sample of milk was taken on 14th December, 1983. Therefore, in the circumstances, even seeing the said date on the use of a rubber stamp as 22 OCT 1983, the Deputy Municipal Commissioner happened to have given the sanction, it cannot be said that there was non-application of mind by him when it is quite obvious that the rubber stamp used for putting the said date is a clear mistake and, therefore, I am unable to accept the contention of Mr JM Panchal that the sanction in question is not a valid and legal one.

5 Mr Panchal further submitted that in view of the circumstances on record this Court should take lenient view as regards the sentence. He urged before me that the incident in question has taken place in the year 1983. Thus more than 12 years have passed since taking of the said incident and the revision applicant has during this period remained under the tension and trauma. He further submitted that the report of the Public Analyst shows that the milk fat percentage was found as 2.5 as against the minimum of 3.5 and the milk solid non-fat was found as 7.8% as against the minimum of 8.5%. Thus, the percentage of the fat deficiency detected by the Central Food Laboratory is not so high. He further drew my attention to the fact that the Public Analyst was examined by the Court and has admitted during the cross-examination that there can be an error of 1 to 2% in the analysis of the milk. It is also to be noted that the Central Food Laboratory as well as Public Analyst had not found that the milk was adulterated by adding water in it and all other tests which were carried out in order to find whether the milk was adulterated were found negative. Therefore, taking into consideration this aspect regarding the adulteration and the fact that the revision applicant has remained under trauma and tension of the conviction for more than 12 years, I hold that ends of justice would be met if the sentence ordered by the trial Court is modified by setting aside the order of sentence of imprisonment and confirming the order of fine. I therefore, hold that the present revision application is partly allowed only as regards the sentence. The order of conviction passed by the learned

Metropolitan Magistrate, Court No. 6, Ahmedabad is maintained. However, the order of sentence of imprisonment passed by the said learned Magistrate is set aside and the order of fine ordered by the said learned Magistrate is confirmed.

6. In view of the peculiar facts and circumstances of the case, the sentence is reduced and this should not be treated as precedent in other cases.

7. With these observations, the present revision application is disposed of. Rule is made absolute in terms of the same.

F A R A D

CRI. RVN APPLN. NO. 94 of 1985

Coram : S.D. Pandit, J.

19/03/1997

For the reasons recorded

in the judgment, this Criminal Revision Application is partly allowed only as regards the sentence. The order of conviction passed by the learned Metropolitan Magistrate, Court No. 6, Ahmedabad is maintained. However, the order of sentence of imprisonment passed by the said learned Magistrate is set aside and the order of fine ordered by the said learned Magistrate is confirmed. However, in view of the peculiar facts and circumstances of the case, the sentence reduced should not be treated as precedent in other cases. Rule is made absolute in the aforesaid terms.

19/3/1997